



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Human Resources Consulting Service

File: B-232338

Date: October 11, 1988

DIGEST

Proposal delivered by Express Mail to agency mailroom 8 or 9 hours before time established for receipt of proposals, but subsequently misrouted by agency mailroom, properly is rejected as late where Express Mail package did not indicate solicitation number and time specified for receipt of proposals as required by solicitation. Thus, even if package was properly handled, it would have arrived late at location designated for receipt of proposals. Thus, agency's lack of expedited procedures for handling bids or proposals was not cause of parcel's late delivery.

DECISION

Human Resources Consulting Service (HRCS) protests the rejection of its offer as late by the Department of Health and Human Services (HHS) under request for proposals (RFP) No. 105-88-8112 which was issued for the acquisition of program assessments consulting services. HRCS argues that the failure of its offer to timely arrive at the contracting activity's office was the fault of the agency and asks that its offer be considered or, in the alternative, that it be awarded its proposal preparation costs.

We deny the protest.

The RFP set the time and date for the receipt of proposals at 4:00 p.m. local time on Monday May 23, 1988, and required receipt in the contracting activity office. The RFP provided that offers were to be submitted in sealed envelopes or packages addressed to the office specified in the solicitation and showing the time specified for receipt, the solicitation number, and the offeror's name and address.

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On May 20, the protester mailed its proposal via U.S. Postal Service Express Mail and the record shows that the parcel arrived at HHS's mailroom some time between 7 a.m. and 7:45 a.m. on May 23. The record also shows that the parcel bore the correct room number address for the contracting activity as specified in the solicitation. The parcel did not indicate the solicitation number and time specified for receipt of proposals as required by the RFP. In this connection we note that the agency report establishes that all mail of whatever kind which is going to an office at HHS's Washington, D.C., facilities must be delivered to a central mailroom where it is then sorted and delivered to its ultimate destination.

HRCS's proposal never arrived at the designated destination and was instead included in a parcel destined for the Sitka Community Association (SCA) in Sitka, Alaska. Thereafter, on August 11, HRCS received a package from the director of SCA which contained its proposal and an explanatory note to the effect that HRCS's proposal had been erroneously included with SCA's Economic Development Grant proposal which had been returned to SCA for reasons not explained in the record.

HRCS argues that the loss of its proposal was due to government mishandling after its arrival at HHS. In particular, HRCS stresses the fact that its offer arrived at HHS at least 8 hours prior to the scheduled time for closing and that the agency was clearly at fault for the improper diversion of its parcel to Sitka, Alaska.

HHS responds that there obviously occurred an error in the handling of HRCS's proposal package but that the error was not the paramount cause of the proposal's non-arrival. In particular, HHS argues that the parcel arrived on Monday morning and that on a typical Monday morning, its mailroom has between 100 and 300 pieces of registered, certified or express mail. According to the agency, it takes a minimum of a half-day to sort this volume of mail and that the earliest HRCS could have expected to have its parcel delivered would have been the following morning and, thus, the agency argues that HRCS's offer would have not been delivered in time to the contracting activity in any event. In this connection, we note that the agency states in its report that there are no special procedures for the expedited delivery of bids or proposals at HHS's mailroom.

The solicitation contained the standard late proposals clause appearing at FAR § 52.215-10 (FAC 84-17) which permits the government to consider a late proposal only if it was sent by registered or certified mail 5 or more days before the date specified for receipt of offers or if the proposal's lateness is due solely to mishandling by the government after receipt at the government installation. At the outset, we note that Express Mail is not considered certified or registered mail for purposes of this exception, Microflect, B-225118, Feb. 17, 1987, 66 Comp. Gen. _____, 87-1 CPD ¶ 173; Building Maintenance Specialists, Inc., B-215019, June 28, 1984, 84-1 CPD ¶ 690. In any event, since HRCS did not mail the parcel until 3 days prior to the proposal due date, the first exception is inapplicable.

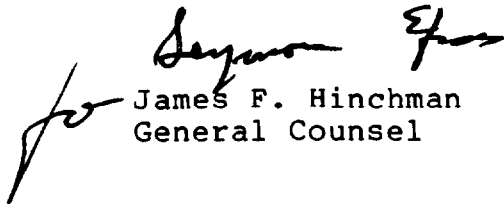
Further, we do think that the second exception is applicable here, namely, that the failure of HRCS's proposal to arrive at its appointed destination was due exclusively to HHS's mishandling of the parcel.

Our Office has long recognized the obligation of government agencies to establish and implement procedures to insure that the transmission of bids or proposals from one place to another will not be the cause of undue delay in the delivery of parcels which are properly addressed and timely mailed. See e.g. Federal Contracting Corp., 56 Comp. Gen. 737, (1977), 77-1 CPD ¶ 444; 49 Comp. Gen. 697 (1970); 42 Comp. Gen. 508 (1963). Thus, agencies should have provisions for priority handling of bid or proposals that arrive within a reasonable time before their due dates. When, however, a proposal is placed in an Express Mail envelope or a pouch provided by a commercial carrier for next day delivery, the required information as to the solicitation number, destination and deadline for receipt may no longer be apparent from the outside envelope. Thus, unless the outside envelope is clearly marked with this information--and the protester does not state the envelope was--the offeror has contributed to any delay in delivery. See Systems for Business, B-224409, Aug. 6, 1986, 86-2 CPD ¶ 164; Building Maintenance Specialists, Inc., B-215019, supra.

Since the protester did not follow the solicitation instruction to state on the package the solicitation number and the date for receipt, the mail clerk had no reason to treat it differently than any other express mail and, under these circumstances, the record clearly shows this package would not have reached the contracting activity in time. Further,

even if the agency had in place special procedures for expedited delivery of bids or proposals, the unmarked proposal here would have been treated under the agency's normal express mail procedures and would not have arrived at the contracting activity office on time.

The protest is denied.

 James F. Hinchman
General Counsel